



**Rule(s) Review Checklist Addendum**  
**(This form must be filled out electronically.)**

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-156 (Abstract, title insurance and escrow businesses)**

Date last reviewed: **June 10, 1998**

Current Reviewer: **Cindy Evans**

Date current review completed: **February 26, 2002**

Is this document being reviewed at this time because of a taxpayer or association request? (If "YES", provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Briefly describe the subject matter of the rule(s): The purpose of this rule is to explain how abstract, title insurance, and escrow services are taxed.**

**2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

<b>YES</b>	<b>NO</b>	
	<b>X</b>	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
<b>X</b>		Are there any interpretive statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
<b>X</b>		Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
		Are there any administrative decisions (e.g., Appeals Division decisions



	<b>X</b>	(WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	<b>X</b>	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**Excise Tax Advisory 288.04.156 (Deeds of Trust—Trustee Fees) provides that fees earned by a title insurance company as a trustee of a deed of trust are taxable under the service and other activities classification of the B&O tax. The information contained in this ETA has broad application and the best method of dissemination would be through the rule. Therefore, ETA 288.04.156 should be incorporated into Rule 156 when it is revised and then repealed.**

**Excise Tax Advisory 387.08.156 (Title Insurance Companies Retail Sales Tax Liability Upon Supplies) provides that persons engaged in the title insurance businesses are the consumers of all materials and supplies used in the connection with the business and must pay retail sales tax upon all such purchases. This information should be incorporated into Rule 156 when it is revised.**

**Audit Directive 8156.1 (Special Charges Related to Escrows) provides that fees charged for filing an information return with the Internal Revenue Service are part of the escrow business and subject to retail sales tax. The purpose of this audit directive was to explain that Det. 87-100, 2 WTD 433 (1987) explains the correct tax-reporting instructions for this income.**

**3. Additional information:** Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**4. LISTING OF DOCUMENTS REVIEWED:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

Interpretive statements (e.g., ETAs and PTAs):



**Excise Tax Advisory 288.04.156 (Deeds of Trust—Trustee Fees)** providing that fees earned by a title insurance company as a trustee of a deed of trust are taxable under the service and other activities classification of the B&O tax.

**Excise Tax Advisory 387.08.156 (Title Insurance Companies Retail Sales Tax Liability Upon Supplies)** providing that persons engaged in the title insurance businesses are the consumers of all materials and supplies used in the connection with the business and must pay retail sales tax upon all such purchases.

**Audit Directive 8156.1 (Special Charges Related to Escrows)** provides that fees charged for filing an information return with the Internal Revenue Service are part of the escrow business and subject to retail sales tax.

Court Decisions:

*First American Title Ins. Co. v. Department of Rev.*, 144 Wn.2d 300, 27 P.3<sup>rd</sup> 604 (2001) (holding that a company providing title insurance owed tax on the payment it received for title insurance, while the underwritten title company are liable for tax on the payment for the preliminary title report (the B&O tax does not pyramid)).

*First American Title Ins. Co. v. Department of Rev.*, 98 Wn. App. 882, 991 P.2d 120 (2000) (holding that when a title insurer sells an insurance policy through an underwritten title company and the underwritten title company retains a portion of the premium as compensation for its preparation of the abstract of title, the title insurer pays B&O taxes on only the portion of the premium that is related to the insurance itself).

Board of Tax Appeals Decisions (BTAs): **None.**

Administrative Decisions (e.g., WTDs):

**Determination No. 99-032, 18 WTD 434 (1999)**(holding that when a taxpayer is not registered as an escrow agent under RCW 18.44.010, the taxpayer is engaging in escrow business activities when the following conditions exist: delivery of instruments is conditional and based upon binding and enforceable underlying contract, parties intended and agreed to form an escrow, and closing instructions and deliveries into escrow are irrevocable).

**Determination No. 98-101, 18 WTD 260 (1999)**(holding that an escrow and closing agent for vessel sales is permitted to collect and remit retail sales or use tax on behalf of vessel dealers where certain criteria are met).

**Determination No. 98-160E, 18 WTD 194 (1999)**(holding that when a taxpayer is not registered as an escrow agent under RCW 18.44.010, the taxpayer is engaging in escrow business activities when the following conditions exist: delivery of instruments is conditional and based upon binding and enforceable underlying contract, parties



**intended and agreed to form an escrow, and closing instructions and deliveries into escrow are irrevocable).**

Attorney General's Opinions (AGOs): **None.**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

#### 4. Review Recommendation:

- X**        **Amend**
- \_\_\_\_\_ **Repeal** (Appropriate when repeal is not conditioned upon another rule-making action.)
- \_\_\_\_\_ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- \_\_\_\_\_ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

**Rule 156 should be revised to incorporate the tax reporting information currently found in ETAs 288.04.156 and 384.08.156.**

5. Manager action:    Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

- \_\_\_\_\_ 1
- \_\_\_\_\_ 2



\_\_\_\_\_ 3  
\_\_\_\_\_ 4